IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/03/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1096 OF 1993 AND SECOND APPEAL NO.1097 OF 1993

Velmuruganataraja Pillai .. Appellant in
both the appeals
-Vs-

Chinniah Pillai .. Respondent in
both the appeals

These second appeals are preferred under Section 100 of CPC against the judgment and decree dated 31.7.1991 made in AS No.77 and 80 of 19 90 on the file of the learned District Judge, Dindigul confirming the judgment and decree dated 5.4.1990 made in OS No.868 of 1986 and OS No.883 of 1985 on the file of the learned Additional District Munsif, Dindigul.

!For Appellant : Mr.N.Damodaran

^For Respondent : No appearance

:COMMON JUDGMENT

This judgment shall govern both the second appeals, namely S.A.Nos.1 096 and 1097 of 1993.

2. These second appeals have arisen from the judgment of the first appellate court, namely, the learned District Judge, Dindigul made in AS Nos.77 and 80 of 1990. Those two first appeals were filed by the plaintiff in OS No.883 of 1985 on the dismissal of the suit and the other filed by the defendant in OS No.868 of 1986, which was decreed.

3. The plaintiff in OS No.883 of 1985, who was the defendant in OS No.868 of 1986, filed the suit for specific performance stating that the suit property belonged to him; that the defendant, who was the plaintiff in the other suit, was his brother-in-law; that in consideration of Rs.1000/-, he executed a sale deed in favour of the opposite party; that it was understood in the presence of the relatives that on receipt of the said amount, he should execute reconveyance deed; that the plaintiff, despite the sale deed, continues to be in possession of the property; that there was a demand for reconveyance deed, but the defendant refused to do so; that the plaintiff issued a notice on 7.8.85, which resulted in reply, and hence there arose a

necessity for filing the suit for specific performance. The plaintiff is the defendant in the other suit in OS No.868 of 1986, which was one for recovery of possession and for mesne profits.

4. The plaintiff in OS No.868 of 1986, who was the defendant in OS No.883 of 1985, filed the suit alleging that he purchased the plaint mentioned two immovable properties, one on 3.12.1952 in consideration of Rs.400/-, while he purchased the other in consideration of Rs.600/- from the defendant; that pursuant to the sale deed, he was put in possession; that he has been paying tax, all along; that the defendant vacated the property and he was living in a third party property for some time; that since the plaintiff has married the sisters of Natarajapillai, he was to accede to the request of the defendant Natarajapillai to occupy the house for some time; that accordingly, the possession was given; that while so, he came forward with a false case of

specific performance alleging that there was an agreement for reconveyance between the parties, and hence, his suit in OS No.883 of 1985 was to be dismissed and the relief in OS No.868 of 1986 was to be granted.

5. Necessary issues were framed and both the suits were taken up for trial by the learned Additional District Munsif, Dindigul, who dismissed the suit in OS No.883 of 1985, while decreed the suit in OS No.8 68 of 1986. Aggrieved over the same, two first appeals, namely AS Nos.77 and 80 of 1990 were preferred. The learned District Judge, on due enquiry, has dismissed both the appeals, confirming the judgment of the trial court. Thus, these two second appeals have been brought forth by the plaintiff in OS No.883 of 1985 and the defendant in OS No.8 68 of 1986.

6. At the time of admission, the following substantial questions of law were formulated by this Court for consideration: SECOND APPEAL NO.1096 OF 1993: 1) Is the suit claim barred under Art.65 of the Limitation Act 1963? 2) Whether the Courts below erred in law and misdirected themselves in holding that the appellant is in permissive possession of the suit property in the absence of independent evidence and there being no proof of the alleged permission? 3) Whether the appellant has perfected title to the suit property by adverse possession? SECOND APPEAL NO.1097 OF 1993: 1) Whether the appellant is entitled to the relief of specific performance? 2) Whether the Courts below have erred in negativing the claim of the appellant merely because the agreement of reconveyance is not reduced to writing? 3) Whether Exs.B2 and B3 sale deeds confer absolute title on the respondent in respect of the suit properties?

7. This Court has heard the learned counsel for the appellant. No representation for the respondent's side, despite notice.

8. This Court has paid its full attention on the submissions made by the learned counsel for the appellant. On scrutiny of the materials available, this Court is of the considered opinion that these second appeals carry no merit. Admittedly, the suit properties belonged to the plaintiff in OS No.883 of 1985; that in consideration of Rs.400/- and Rs.600/-, he executed

two sale deeds in favour of the defendant therein, which were marked as Exs.B.2 and B.3. Both these documents would clearly reveal that the defendant, namely, Chinniah Pillai was put in possession pursuant to the sale deeds. What was contended by the appellant before the courts below and equally here also is that at the time of sale as found under Exs.B.2 and B.3 in the presence of the relatives, it was agreed that the defendant, on receipt of the consideration of Rs.1000/-, should execute reconveyance deed in favour of the plaintiff. The same was flatly denied by the defendant. Had it been true that the agreement of reconveyance was entered into between the parties, it should have been reduced into writing, since the sale transaction between the parties was actually reduced into writing and was also registered. No explanation was forthcoming from the plaintiff's side as to why it was not reduced into writing. Thus, it was an oral one.

9. While, the plaintiff has come forward with a relief of specific performance on the basis of the oral agreement for sale, a duty is cast upon him to prove the same, strictly and by acceptable evidence. In the instant case, he has examined two witnesses, but there were lot of inconsistencies found in the evidence regarding the alleged oral agreement and in respect of the second item of the property, there was an othi executed under Ex.B.1. Thus, it would be indicative of the fact that the defendant has not shown that he was in possession of the second item of the property, all along. The defendant has filed Exs.B.5 to B.16 Tax receipts and Exs.B.19 to B.22, kist receipts. The said documents would clearly indicate that the defendant was put in possession of the property. Thus, it would be indicative of the fact that the second item of the property was, all along, in possession of the defendant. The plea that was taken by the plaintiff in his suit that he has acquired title to the property by adverse possession was thoroughly misconceived, since subsequent to the sale of the property, on permission by the defendant, the plaintiff has got into possession. Hence, both the courts below were perfectly correct in recording the concurrent finding.

10. This Court is unable to see any reason why the concurrent finding of both the courts below should be disturbed. Hence, both the second appeals fails and the same are dismissed, confirming the judgment of the courts below. Both the parties are directed to bear their costs.

Index : Yes
Internet : Yes
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To
1. The Additional District Munsif, Dindigul 2. The District Judge, Dindigul
3. The Record Keeper, VR Section, High Court, Madras